

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 VORNELIUS J. PHILLIPS,

Case No.: 2:18-cv-00933-RFB-NJK

9 Petitioner

10 v.
11 **ORDER**
12 BRIAN WILLIAMS, et al.,
13 Respondents

14 Petitioner Vornelius J. Phillips has submitted a § 2254 petition for a writ of habeas corpus
15 and has now paid the filing fee (*see* ECF Nos. 1-1, 10). The court has reviewed his petition, and
16 it shall be dismissed as second and successive.

17 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted
18 by this section is filed in the district court, the applicant shall move in the appropriate court of
19 appeals for an order authorizing the district court to consider the application.” Where a petition
20 has been dismissed with prejudice as untimely or because of procedural default, the dismissal
21 constitutes a disposition on the merits and renders a subsequent petition second or successive for
22 purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009);
23 *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

1 Petitioner indicates on the face of his petition that he seeks to challenge the state
2 judgment of conviction in case no. C-175468 (ECF No. 1-1, p. 2). This court takes judicial
3 notice of its docket, and Phillips previously filed case no. 2:10-cv-00666-PMP-PAL, in which he
4 challenged the same state judgment of conviction. On February 3, 2011, this court denied the
5 petition on the merits and judgment was entered (2:10-cv-00666-PMP-PAL, ECF Nos. 9, 10).
6 Phillips filed a notice of appeal, and on December 21, 2011, the Ninth Circuit Court of Appeals
7 denied a certificate of appealability (ECF Nos. 11, 15).

8 This petition, therefore, is a second or successive habeas corpus petition. *Henderson*, 396
9 F.3d at 1053. Petitioner was required to obtain authorization from the Ninth Circuit Court of
10 Appeals before he could proceed. 28 U.S.C. § 2244(b)(3). Petitioner has not indicated that he
11 has received such authorization from the court of appeals.

12 Thus, this petition shall be dismissed with prejudice. Reasonable jurists would not find
13 this conclusion to be debatable or wrong, and the court will not issue a certificate of
14 appealability.

15 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the petition
16 (ECF No. 1-1).

17 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** as set forth in this order.

18 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

19 **IT IS FURTHER ORDERED** that the Clerk shall add Aaron D. Ford, Nevada Attorney
20 General, as counsel for respondents.

21
22
23

1 **IT IS FURTHER ORDERED** that the Clerk shall electronically serve the petition,
2 along with a copy of this order, on respondents. No response by respondents is necessary.

3 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel (ECF
4 No. 4) is **DENIED** as moot.

5 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
6 and close this case.

7 DATED: January 9, 2019.

8 
9 RICHARD F. BOULWARE, II
10 UNITED STATES DISTRICT JUDGE

11
12
13
14
15
16
17
18
19
20
21
22
23